No. 79-1777

MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

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COUNTER QUESTION PRESENTED

May employees be liable in their individual capacities to their employer in monetary damages for their alleged breach of the collective bargaining agreement under § 301 (a) and (b) of the Labor Management Relations Act, 29 USCA § 185 (a) and (b)?

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FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 614 F. 2d 1110 and is reprinted at App. A, pp. 1a-13a, of the Appendix to the Petition herein. The opinions of the United States District Court for Eastern District of Michigan, Southern Division granting the Motion to Dismiss and denying the Motion for

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* Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc.

** Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities at the time of the work stoppage. The following individuals were designated as named Defendants in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Soupal (Automobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner, (F.J. Boutell Driveaway Co., Inc.).

Reconsideration are not reported and are reprinted respectively at App. B, pp. 15a-19a and App. C, pp. 19a-21a of the Appendix to the Petition herein.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on February 8, 1980. The Petition herein was filed on May 7, 1980 and granted on October 14, 1980.

STATUTE INVOLVED

This case involves §301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. 185 which is set forth in its entirety at App. D, pp. 21a-23a of the Petition herein.

STATEMENT OF THE CASE

Federal Jurisdiction

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc., Petitioners, brought this action pursuant to §301 of the Labor Management Act (29 USC §185) against named and unnamed employees for injunctive and monetary relief as a result of the employees' withholding of their employment services. The cases were consolidated for the hearing on the Employers' request for injunctive relief.

STATEMENT OF FACTS

The employers are engaged in the transportation by truck of newly manufactured motor vehicles. (App. A, 2a)[1] All are signatory to an identical collective bargaining agreement entitled the National Master Automobile Transpor-

[1] Note: References to the appendices to the Petition herein are designated "App., a". References to the Joint Appendix are designated "J.A.".

ters Agreement and Central and Southern Conference Areas Supplemental Agreements which cover their operations, including their Flint, Michigan facilities. (J.A. 14, ¶5; 16, ¶10; 24, ¶10; App. A, 2a)[2]

The employees are drivers and other individuals employed at the employers' Flint, Michigan facilities who are members of Teamsters Local 332. (J.A. 14, ¶4; 22-23, ¶4) Teamsters Local 332 is affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America. Teamsters Local 332 is a signatory to the collective bargaining agreement with the companies and Local 332 and International Union are the exclusive bargaining agency for the employees. (J.A. 14, ¶3; 15, ¶7; 15, ¶8; 22, ¶3; App. A, 2a)

On June 8, 1976, the employees of Complete Auto Transit ceased working. (App. A, 2a; Tr. 120)[3] On June 10, the employees of the other two companies engaged in a similar cessation from work. (App. A, 2a; Tr. 121)

The companies filed the instant actions, which were subsequently consolidated, pursuant to 29 U.S.C. §185(a) requesting injunctive relief and damages from the employees. The companies alleged that the work stoppages were in violation of the collective bargaining agreement and were not authorized by the local union.[4]

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[2] The collective bargaining agreement is found in the record as Exhibit A attached to the Complaint of Complete Auto Transit, Inc.

[3] References to the transcript of the June 14, 1976 hearing on the request for injunctive relief are designated "Tr. ". The transcript is found in the record.

[4] The allegations pertaining to the unauthorized nature of the work stoppage and to the request for damages read as follows:

> 15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.
>
> 16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorney fees. (J.A. 8)

On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore not arbitrable under the agreement. (App. A, 2a) The District Court also found that the strikes had not been authorized by the International Union. (App. A, 2a)

On June 16, 1976, the companies filed amended complaints, renewing their request for injunctive relief. (J.A. 13 et seq.) After a hearing on the motions on June 21, 1976, the District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which is arbitrable under the collective bargaining agreement. The District Court concluded that the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present. (App. A, 3a)

The Proceedings Below

1. The District Court

In March of 1977, the employees moved for the dismissal of the consolidated actions. (J.A. 31)[5] The motion asserted that the request for damages did not state a valid claim for relief. The District Court granted the motion and held that the employees could not be sued for money damages in their individual capacities since such relief would frustrate the Congressional purpose behind §301 of shielding union members from individual liability. (App. B, 16a, 17a)

The companies moved for the reconsideration of the dismissal of the action. The District Court denied the motion. (J.A. 35) The District Court found the reasoning in *Sinclair Oil Corp.* v *Oil, Chemical, & Atomic Workers Int'l.*

[5] The motion also sought to have the injunctions disolved. Since the only issue raised herein is the dismissal of the damage action, discussions of the lower courts' treatment of the injunction issue has been omitted.

Union, 452 F.2d 49 (7th Cir. 1971) to be in harmony with the intent of Congress in passing §301 and rejected the companies' contention that the Appeals Court in *Sinclair* had improperly construed the legislative history. (App. C, 20a)

2. The Appeals Court

Upon appeal, the Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in *Sinclair Oil*, supra, and agreed with that court's interpretation of the legislative history of Section 301. (App. A, 10a, 13a) The Seventh Circuit had concluded that Congress did not intend to create a cause of action under §301 for damages against individual union members for breach of the no-strike agreement because of the concern and desire to avoid a repetition of the Danbury Hatters cases.[6] The Appeals Court rejected the contention that this Court's statements in *Smith* v *Evening News Association*, 371 U.S. 195 (1962) and *Hines* v *Anchor Motors Freight, Inc.*, 424 U.S. 554 (1976) involving individual employee actions arising out of the contract violations by employers supported the existence of a damage action against individual employees. (App. A, 13a)

SUMMARY OF ARGUMENT

The Labor Management Relations Act of 1947 was enacted in the main to redress the imbalance existing prior to the enactment of the 1947 Act. Congress accomplished this by creation of Union Unfair Labor Practices that made unions responsible for their violation.

It was with this same thought in mind that Congress enacted §301; Congress provided the parties to the collective bargaining agreement with a forum, the Federal courts,

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[6] See Loewe v Lawlor, 208 U.S. 274 (1908); Lawlor v Loewe, 235 U.S. 522 (1915), and Loewe v Savings Bank of Danbury, 236 F. 444 (2d Cir. 1916), aff'd 242 U.S. 357 (1917).

to sue for breaches of the collective bargaining agreement. It is clear the main purpose of the enactment of the Labor Management Relations Act of 1947 by Congress was to make unions more accountable for their actions; §301 played a role in Congress' design to assure accountability. §301 provided a Federal court forum for employers, unions and employees to sue for breaches of rights afforded them under the contract. The industrial peace Congress was attempting to insure was to make certain unions were more accountable for their actions and not that the employees be made more accountable for their actions.

Congress was aware of wildcat strikes by employees but did not redress this issue in passage of §301 of the Labor Management Relations Act; §301 does not allow employees to be sued individually by their employer for money damages for their breaches of the collective bargaining agreement. An examination of the legislative history reveals that contrary is true. The following threads are seen throughout the Congressional discussion of what became §301. There was Congressional concern over the specter of the Danbury Hatters decisions and what it caused and how it effected those employees. The Congressional passed and Presidentially vetoed H.R. 4908 (1946) (Case bill)[7] with its Section 10 provisions including treatment of employees who breach collective bargaining agreements; and Congressional acknowledgement that §301 of the Labor Management Relations Act of 1947 was to be similar to §10 of H.R. 4908. Congressional discussion acknowledging employees could be disciplined by their employer up to and including discharge and be disciplined by their union by being fined for participating in an unauthorized strike and refusing the urging of their union to return to work.

The Appeals Court's construction of the legislative history was correct in concluding it did not support holding individual employees liable for money damages for breaches of collective bargaining agreements by their participating in

[7] H.R. 4908, 79th Cong., 2d Sess. (1946) vetoed in 1946

unauthorized work stoppages. The Appeals Court correctly concluded Congress did not intend to provide the employer with a money damage remedy for breaches of the terms of the contract, and the Court of Appeals correctly concluded the employer's remedy of disciplining up to and including discharge of employees was not only an adequate remedy but the only remedy afforded the employer by §301 for employees breaches of contracts by their participation in an unauthorized work stoppage. The Appeals Court correctly rejected the employer's mutuality of remedy argument as the basis for finding individual employee liability in money damages for their breach of the collective bargaining agreement.

The Appeals Court's decision is consistent with decisions of this Court involving the construction and interpretation of §301; the Appeals Court's decision did correctly apply and interpret this Court's §301 decisions. The Appeals Court correctly relied upon the Seventh Circuit's *Sinclair Oil* decision and its analysis of §301. The Appeals Court correctly resolved the issue and in so doing did properly reconcile the policy of the statute with the problems presented. Having properly ascertained the legislative intent in enacting §301, the Appeals Court correctly concluded a money damage remedy was not available to the employer against its employees although the issue presented does lie in the penumbra of the expressed statutory mandates.

The Appeals Court's decision does not relegate the employer's §301 rights to a lesser degree of protection than that afforded employees. It is true the employer's rights under §301 may be different than those of its employees, but it is equally true in the industrial setting the employer's prerogatives are broader and more inclusive than its employees. The employer and employees are not of equal stature nor on equal footing in the industrial sector; Congress in enacting §301 has both acknowledged and taken cognizance of this fact. The Appeals Court's decision has

not created a gap in the uniform enforcement of collective bargaining agreements. For whatever may be said, an employer has the prerogative of disciplining an employee up to and including discharge for breaches of the collective bargaining agreement; while on the other hand, the employee has no such option for an employer's breach of the contract.

Industrial peace will not be diminished one iota by this Court's decision affirming the Appeals Court on this issue. The contrary would be true if employers were able to sue their employees for money damages for their breaches of the collective bargaining agreement. Money judgments obtained by an employer against his employees then would be collected by garnishment and attachment actions, neither of which would do anything to further industrial peace that employers profess they are seeking.

ARGUMENT

I. THE APPEALS COURT'S DECISION CORRECTLY INTERPRETED THE LEGISLATIVE HISTORY OF §301.

In affirming the District Court's dismissal of a damage action against the employees, the Appeals Court concluded that the legislative history of §301 indicates that Congress did not intend to create a cause of action for damages against individual union members. (App. A, 13a) The Appeals Court's analysis and conclusion of the legislative history accurately assesses Congressional concern about the issue of individual liability. Congressional concern was to insulate employees from individual liability; the identifying and solidifying phrase on this issue was the Danbury Hatters cases. See, e.g. 93 Cong. Rec. 6283 (1947) (Rep. Case). However, there was other instances of this concern: The passage by Congress of H.R. 4908 (Case bill) that was vetoed by the President. §10(d) of H.R. 4908 is another example of the protective concern of Congress and its intention to

exempt employees from being individually responsible in money damages to their employers for breaches of the collective bargaining agreement. Likewise, the Congressional colloquy between Sen. Taft and Sen. Caphart on the subject of handling of employee unauthorized work stoppages and breach of the collective bargaining agreement. 92 Cong. Rec. 5706 (1946). These are clear examples of Congressional concern to insulate the individual employees from monetary liability for their breaches of the collective bargaining agreement occasioned by their participation in an unauthorized work stoppage.

The Appeals Court's analysis of the legislative history was accurate and correct; the Appeals Court correctly relied upon the Seventh Circuit's decision in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union*, 452 F.2d 49 (7th. Cir. 1971) The Seventh Circuit's analysis of the legislative history surrounding the enactment of §301 was thorough and complete; it considered the entire legislative history of §301 and not solely the Danbury Hatters decisions. The Appeals Court realized the factual differences between the Danbury Hatters cases and the factual situation involving individual employee breaches of the collective bargaining agreement; however, the Appeals Court correctly concluded the legislative history supported the Congressional concern of avoiding the consequences experienced by the members of Danbury Hatters and that they did not want it to occur again as the result of enacting §301. Other courts faced with this issue have reached the same results.[8]

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[8] For cases prohibiting actions against individual employees, see e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978); *Lakeshore Motor Freight* v *Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, ___ F. Supp.___; 104 LRRM 2153 (W.D. Pa. 1980) *United Steelworkers of America* v *Lorraine, a Division of Koehring Co.*, ___ F. 2d___, 103 LRRM 2627 (6th Cir. 1980); *Putnam Fabricating Co.* v *Null*,_____ F. 2d _____, 105 LRRM 2645 (4th Cir. 1980).

It is clear Congressional concern manifested in §301(b) and (e) was intended to extend to include, cover and exempt from money damages breaches of collective bargaining agreements by individual employees, including their participation in unauthorized work stoppages.

An examination of the legislative history is required as the expressed language of the statute does not specifically address itself to the issue presented. The Appeals Court's analysis of the legislative history was correct; the Appeals Court properly characterized and framed the issue. (App. A, 9a, 10a) The Appeals Court's decision placed Congressional concern over the Danbury Hatters cases in its proper perspective; the Appeals Court realized and considered the factual differences between the Danbury Hatters cases and the instant factual situation.

A. The Congressional Purpose Behind the Enactment of §301 Was to Make Unions Accountable and Make Collective Bargaining Agreements Binding and Enforceable Between the Parties.

Congressional passage and enactment of the Taft-Hartley Act and the passage by Congress but vetoed by the President of H.R. 4908, 79th Cong., 2d Sess. (1946) demonstrated several interrelated concerns on the part of Congress. First and foremost, Congress wanted to make unions more accountable for their action and to redress the imbalances created by the National Labor Relations Act.[9] To that end Congress made unions responsible for violations of unfair labor practices that were enacted as part of the Labor Management Relations Act. Also, Congress enacted §301 to assure the enforcement of collective bargaining agreements by the parties. An examination of §301 and its subsections (a) through (e) reveals Congress was intending to make it easier to hold unions accountable for their actions; each of the subsections of §301 addresses itself to facilitating a cause of action against the union for breach of a collective bargaining agreement.

[9] July 5, 1935 C. 372 1 et. seq., 49 Stat. 449 et. seq.

An analysis of the legislative history of the provisions authorizing suits in Federal court contained in the report from the Committee on Education and Labor revealed a concern of the committee that labor organizations be held responsible for contract violations was clearly expressed. H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947). The report stated:

> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. H.R. Rep. No. 245 at 46

The Senate also expressed its concern over the enforceability of collective bargaining agreements. S. Rep. No. 105, 80th Cong., 1st Sess. at 15 (1947). The report from the Committee on Labor and Public Welfare stated that the Senate's proposal would make agreements equally enforceable on both parties. The report stated:

> If unions can break agreements with relative inpunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> Consequently, to encourage the making of agreements and to promote industrial peace through

> faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce. S. Rep. No. 105 at 16.

A major Congressional concern was over the fact it would be extremely difficult to make unions accountable and responsible for adhering to their obligations under the collective bargaining agreement, until unions were recognized as legal entities throughout the entire country thus enabling litigation against the unions to be easily effectuated. Congress recognized this prcblem and its enactment of §301 and its subsections was its response to the problem. The debate in the Senate over §301 revealed one of the primary purposes of §301 was to overcome the procedural difficulties that existed in some states when an employer attempted to sue a union. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball). The debate also revealed the overriding concern that existed in Congress that collective bargaining agreements must be enforceable and binding upon the union. 93 Cong. Rec. 3839 (1947) (Senator Taft). Senator Taft stated:

> What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. 93 Cong. Rec. 4141 (1947)

The Senate Report reflected the same concern over the enforceability of collective bargaining agreements. The Senate report recognized the problem would not be corrected until labor organizations were recognized as legal entities and until that was accomplished the mutual responsibility

necessary to make collective bargaining agreements meaningful would be missing. The Senate Report stated:

> Statutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace. S. Rep. No. 105 at 17.

The legislative history of §301 reveals through the reports and debates of the House and Senate that the underlying purpose of §301 and its subsections was to make the union a legal entity so that it could sue and be sued. Thereby, the parties to the collective bargaining agreement, the employer, union and its members were assured they could sue for breaches of the terms of the collective bargaining agreement and provide the parties access to Federal courts to enforce the collective bargaining agreement. This would insure the collective bargaining agreements would remain a potent institution in the framework of national labor policy and at the same time assist in the promotion of industrial peace. The Senate Report indicates the importance of making the union a legal entity in assuring the sanctity of the collective bargaining agreement:

> It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective bargaining agreements. The Congress has protected the rights of workers to organize, it has passed laws to encourage and promote collective bargaining. Sen. Rep. No. 105 at 17.

B. The Appeals Court Correctly Construed Congressional Concern Over Individual Liability and Afforded It Proper Significance.

In rejecting the argument that a damage action could be brought against individual employees, the Appeals Court

relied upon the Seventh Circuit's decision in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 (7th Cir. 1971). The Seventh Circuit, in reaching its decision in *Sinclair* did not rely solely on the legislative history relating to Congressional discussion of the specter of the Danbury Hatters cases and its effect on the Danbury Hatters members in its debates over §301 when the Seventh Circuit concluded individual employees cannot be sued for money damages by their employer for breaches of the collective bargaining agreement including their participation in an unauthorized work stoppage. In rejecting the notion of individual employee monetary liability, the Seventh Circuit's review and analysis of the legislative history surrounding the enactment of §301 led to their determination that the legislative history of §301 did not support such an employer's cause of action against its employees.

In reviewing the legislative history to see what alternative remedies are available to be used against employee breaches of the collective bargaining agreement, including unauthorized work stoppage, the Seventh Circuit in *Sinclair Oil,* 452 F. 2d 49 at 53, discusses the debate in the Senate on §301 and a statement made by Senator Taft:

> If there is a collective bargaining agreement and the men are bound by it, they ought to carry it out. If the union wants to carry it out and some of the men say, "We will not do it", they ought to be liable. 92 Cong. Rec. 5706 (1946).

The context of this discussion between Senator Taft and Senator Capehart clearly demonstrates the liability referred to is the union's ability to fine its members for refusing to obey the union's order to return to work from an unauthorized work stoppage that the employee-members were participating.[10]

[10]Mr. Capehart. I believe I am correct in the statement that many miner's contracts an agreement is contained that if any member of the union pulls a wild-cat strike or a sit-down strike, or refuses to work, he is

(Continued on page 15)

Additionally, the Seventh Circuit relied on the legislative history of H.R. 4908, 79th Cong., 2d Sess. (1946) particularly with Section 10 passed by both houses of Congress but vetoed by the President. In its final form as recorded and passed by the House and the Senate, Section 10 included subsection (d) that provided employees who participated in unauthorized work stoppages would lose their status as employees under the National Labor Relations Act.[11]

Footnote 10 (Continued from page 14)

automatically fined by the union, and I think the fine has been as high as $6.00 a day. I think it will be found today that such provisions are contained in miner's contracts, by which they try to discipline their own members by fining them $2.00, or $4.00, or $6.00 a day if they refuse to work according to the terms of the collective bargaining contract.

Mr. Taft. Yes, I think so. Generally, this particular provision has been approved by the labor people. They feel, and I feel that a responsible labor leader who wants to keep his contract should not be hampered by the fact that members of the union whom he cannot control put on a wildcat strike. Four or five men can tie up an entire plant—and it has happened repeatedly—if they happen to be in a crucial spot. Those are the men who ought to be disciplined as they prevent a responsible labor leader from carrying out his collective bargaining contract. 92 Cong. Rec. 5706 (1946).

[11] The bill, as reported and passed by both houses.

Sec. 10.(a) Suits for violation of a contract concluded as the result of collective bargaining between an employer and a labor organization if such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided. That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of this section, district court shall be deemed to have jurisdiction of the labor organization (1) in the district in which such organization maintains its principal office, or, (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interest of employee mem-

(Continued on page 16)

It is clear from Section 10 (d) of H.R. 4908, 79th Cong., 2nd Sess. (1946) that Congress contemplated employees would lose their status as employees as the sole basis for handling employee breaches of the collective bargaining agreement, including such a breach as participating in an unauthorized work stoppage.

There is legislative history supporting the argument that Congressional purpose evidenced by the language of Section 10 (d) of H.R. 4908, 79th Cong., 2d Sess. (1946) has been carried out in the spirit of the language of §301. Senator Hatch compared the various provisions of H.R. 4908, 79th Cong., 2d Sess. (1946) with those of Senator Taft's bill S. 1126 and determined the provisions of §10 of H.R. 4908, 79th Cong., 2d Sess. were substantially similar to §301 of the Senator Taft bill. S. 1126. 93 Cong. Rec. 5010 (1947). It was S. 1126 that was enacted and became the Labor Management Relations Act of 1947. Likewise, this Court has stated previously:

> The direct antecedent of §301 was §10 of the Case bill H.R. 4908, 79th Cong., 2d Sess., which was passed by both Houses of the Congress, but vetoed by the President in 1946. In conferring upon the federal district court's jurisdiction over suits upon contracts made by labor organizations, that section of the Case bill contained provisions substantially the same as §301. *Charles Dowd Box Co., Inc.* v *Courtney*, 368 U.S. 502 at 509 (1962).

(Footnote 11) Continued from page 15)

bers. The service of summons, and subpoena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

(d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights with such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of Sections 8, 9 and 10 of the National Labor Relations Act: Provided. That such loss of status for such employee shall cease if and when he is re-employed by such employer.

In *Sinclair Oil* 452 F. 2d 49 at 52 the Seventh Circuit did consider the specter of the Danbury Hatters cases as set forth in its analysis of the legislative history surrounding the enactment of §301. Reference was made to Senator Taft's remark relating to the Danbury Hatters cases. We do not want to perpetuate such a condition. 92 Cong. Rec. 5705 (1946) Senator Taft was expressing Congressional concern of its desire to avoid subjecting individual union members to fiscal ruin that the employees involved in a Danbury Hatters case experienced as the result of those decisions.

There is no question Congress was concerned with the specter of the Danbury Hatters cases being revisited upon the employees and so was the Seventh Circuit in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 (7th Cir. 1971). However, the *Sinclair Oil* decision is well supported by the legislative history surrounding §301 including the Congressional concern of avoiding a recurrence of what happened to the Danbury Hatters members.

The Appeals Court did correctly construe the legislative history and afforded the legislative history its rightful significance as it related to the issue of individual employee liability in monetary damages to their employer for their breach of the collective bargaining agreements, including participation in unauthorized work stoppages. The Appeals Court correctly relied upon the *Sinclair Oil* decision and the Seventh Circuit's analysis of the legislative history of §301. (App. A, 13a)

C. The Appeals Court's Conclusion That the Only Remedy Available to an Employer Confronted With an Unauthorized Work Stoppage in Violation of the Collective Bargaining Agreement Is Discharge or Disciplinary Action Is Supported in the Legislative History of §301.

While acknowledging the main purpose behind the Taft-Hartley Act was the promotion of industrial peace, the

Appeals Court correctly analyzed the legislative history of §301 by concluding the thrust of §301 was to make unions accountable for their actions in breach of the collective bargaining agreement and that it was not the intention of §301 to make individual employees liable in money damages for breaches of the collective bargaining agreement, including their participation in an unauthorized work stoppage. That is not to say the employer is without recourse and remedy in such situations or that they must sit idly by. Employee participation in unauthorized work stoppage in derogation of the terms of the collective bargaining agreement exposes the individual employees to discharge or subject to disciplinary action. The Appeals Court correctly concluded that this was the sole type of remedy available to an employer under §301 when confronted with a situation of their employees participating in an unauthorized work stoppage. (App. A, 10a) In arriving at this conclusion, the Appeals Court adopted the analysis and conclusion of the Seventh Circuit in *Sinclair* and its interpretation of the legislative history of §301. (App. A, 10a) The Appeals Court concluded the legislative history of §301 did not provide a parallel purpose of making individual employees financially liable in money damages to their employer for breaches of the collective bargaining agreement by their participation in unauthorized work stoppages. (App. A, 10a) In arriving at this conclusion, the Appeals Court adopted the Seventh Circuit's persuasive analysis and conclusions with respect to the legislative history of §301 contained in *Sinclair*. (App. A, 10a)

As *Sinclair Oil* indicates, an employer's disciplining of its employees up to and including discharge for their participation in an unauthorized work stoppage is not the only disciplinary punishment such employees may be subjected. The union may certainly discipline their members by fining them for refusing to abide by the union's request to return to work from an unauthorized work stoppage. The legislative history surrounding §301 recognizes this as another method of limiting the occurrence of employee participation

in unauthorized work stoppages. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* F. 2d 49 (7th Cir. 1971)

The Seventh Circuit's analysis of Congressional concerns that led to the enactment of §301 is dispositive of the issue of can individual members be held financially responsible in money damages to their employer for breaches of the collective bargaining agreement by their participation in unauthorized work stoppages. §301 as enacted focused on union actions and conduct in breach of the collective bargaining agreement and making unions accountable and responsible for these actions and conduct. This is clear upon reviewing each of the subsections of §301. By reviewing the legislative history of §301 and §301 as enacted, it is clear the intention of Congress was to accomplish industrial peace through making unions accountable for their actions and breaches of their collective bargaining agreement. Likewise, it is clear §301 did not focus individual employees' action or conduct in breach of the collective bargaining agreement. Certainly Congress was aware of the occurrence of wildcat strikes; the colloquy between Senators Taft and Capehart attest to Congressional awareness.[12] Therefore, it can be concluded that Congress did not believe employee participation in unauthorized work stoppages was any real threat to the industrial peace that §301 was endeavoring to accomplish or that adequate methods already existed to accomplish the same purpose of achieving industrial peace.

An examination of the legislative history surrounding the passage and enactment of the Taft-Hartley bill and the passage by the House and Senate but vetoed by the President of the Case bill H.R. 4908, 79th Cong., 2d Sess. (1946) reveals Congress concluded there already existed sufficient recourse to adequately handle employee participation in unauthorized work stoppages in derogation of the terms of the collective bargaining agreement.

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[12] Text at footnote 10, supra.

The legislative history does support the Seventh Circuit's decision in *Sinclair* that individual employees could not be sued under §301 in money damages by their employer for breaches of the collective bargaining agreement due to their participation in unauthorized work stoppages. The legislative history surrounding the Case bill including the legislation passed by Congress contained a provision, §10 that corresponds to §301.[13] §10 (d) of the H.R. 4908 provided employees would lose their status as employees under the Act for their participation in unauthorized work stoppages in breach of the collective bargaining agreement; therefore, the employer would be free to discipline an employee up to and including discharge without fear or concern that the discipline would be in violation of the employee's rights under the Act. It is clear from §10(d) of H.R. 4908 that Congress had contemplated loss of employee status under the Act as the sole basis for handling employee breaches of the collective bargaining agreement due to their participating in unauthorized work stoppages.

Also, there is legislative history as well as this Court's concurrence supporting the position that the Congressional purpose evidenced by the language of §10 of the Case bill has been carried through in the spirit of the language of §301. Senator Hatch's comparison of the two bills. S. 1126 (Senator Taft's bill) with H.R. 4908 (Rep. Case bill); Senator Hatch concluded §10 of H.R. 4908 was substantially similar to 301 of S. 1126. Cong. Rec. 5010 (1947). It was S. 1126 80th Cong. 1st Sess. (1947) that was enacted and became the Taft-Hartley Act. Likewise, this Court concluded in *Charles Dowd Box Co., Inc.*, v *Courtney*, 368 U.S. 502 at 509 (1962) that the provisions of §10 of H.R. 4908 were and contained provisions substantially similar to those of §301.

There is legislative history surrounding the enactment of the Taft-Hartley Act and its direct antecedent H.R. 4908 that supports the conclusion Congress was cognizant of

[13] Text a Footnote 11, supra.

alternative remedies that were available to handle employee breaches of the collective bargaining agreement. Congress recognized that unions could discipline their members by fining them if the employees ignored the union's request to return to work from an unauthorized work stoppaged; the colloquy between Senators Capehart and Taft certainly supports this conclusion.[14]

The Seventh Circuit's analysis of the legislative history of §301 in *Sinclair Oil* does certainly support its conclusion.

> Congress was well aware of the problem involved in reaching and enforcing no-strike agreements, and we think that when Section 301 was enacted it had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. We conclude that the primary remedy of *Sinclair* is discharge or discipline of individual defendants. Of course, the union has the right to discipline its disobedient members. 452 F. 2d 49 at 54 (Citations and footnote omitted).

The Appeals Court's reliance and adopting of the Seventh Circuit's decision in *Sinclair Oil* on this question of individual employee liability is correct and supported by the legislative history and the Congressional purpose in enacting §301.

II. THE AVAILABILITY OF A MONEY DAMAGE REMEDY AGAINST INDIVIDUALS PARTICIPATING IN AN UNAUTHORIZED WORK STOPPAGE IS NOT SUPPORTED BY THIS COURT'S DECISIONS INTERPRETING §301.

The Appeals Court correctly concluded in its review of this Court's decision in *Smith* v *Evening News Ass'n*, 371 U.S. 195 (1962) and *Hines* v *Anchor Motor Freight*, 424 U.S. 554 (1976) that neither case is authority for holding

[14] Text at Footnote 10, supra.

that Congress intended to create a cause of action for damages against individual employees. (App. A, 12a-13a) In so holding, the Appeals Court correctly perceived the import and gave the proper weight to each of these cases. In *Smith* v *Evening News*, the issue before the court was one of jurisdiction, not the separate question did §301 create a cause of action; in arriving at this conclusion the Appeals Court cites this Court's decision in *Bell* v *Hood*, 327 U.S. 678 (1946). The Appeals Court goes on to state the holding of this Court in *Smith* v *Evening News* was that §301 is not to be given a narrow interpretation and that it entitles an employee to sue his employer in money damages for breaches of a collective bargaining agreement. (App. A, 12a) The Appeals Court concluded this Court's decision in *Hines* involved the issue, could employees maintain an action against their employer for breach of a collective bargaining contract when the employees' accompanying complaint against their union for breach of its duty of fair representation had withstood a motion for summary judgment. (App. A, 13a) This Court, in holding it was error to dismiss the employees' action against the employer stated: "Section 301 contemplates suits by and against individual employees as well as between unions and employers." *Hines* v *Anchor Motor Freight*, 424, U.S. 554 at 562 (App. A, 13a) The Appeals Court correctly concluded:

> Neither of these statements by the Supreme Court in cases involving individual acts of alleged contract violations by employers is authority for holding that it was the intention of Congress in enacting §301 to create a cause of action for damages against individual union members for breach of a no-strike agreement. (App. A, 13a).

The Appeals Court has not misconstrued the significance of these decisions as well as the intent and meaning of *Textile Workers Union of America* v *Lincoln Mills of Alabama*, 353 U.S. 448 (1957). The Appeals Court's decision is consistent with this Court's holding in *Lincoln Mills*,

that the substantive law to apply in suits under §301 is federal law which the courts must fashion from the policy of the National Labor Laws. 353 U.S. 448 at 456. In *Lincoln Mills*, this Court points out the purpose of §301 was to provide the necessary legal remedies for breaches of the collective bargaining agreement. This Court then quotes a colloquy between Rep. Hartley and Rep. Barden over the purpose of §302 of the House bill.[15] This Court points out that §302 of H.R. 3020 80th Cong., 1st Sess. (1947) was substantially the equivalent of the present §301. The context of this Court's holding in *Lincoln Mills*, was made to insure the employer would abide by his contractual promises to arbitrate grievance disputes. This Court has long recognized the importance of the role played by voluntary agreed upon arbitration of disputes between the parties to a collective bargaining agreement in insuring industrial peace and stability. *United Steelworkers of America* v *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Although the issue before the Appeals Court does lie in the penumbra of the expressed statutory mandates set forth in §301, the Appeals Court did correctly look to the policy of the legislation and the legislative history surrounding the

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[15] "Mr. Barden. Mr. Chairman, I take this time for the purpose of asking the Chairman a question and in asking the question I want it understood that it is intended to make it a part of the record that may hereafter be referred to as history of the Legislation."

"It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts and strike actions and proceedings in district court contemplates not only the ordinary law suits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could for example be brought by the employers, the labor organizations or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract."

"Mr. Hartley. The interpretation the gentleman has just given of that section is absolutely correct." 93 Cong. Rec. 3656-3657 (1947).

enactment of the legislation and concluded §301 does not entitle the employer to sue individual employees in monetary damages for their participation in an unathorized work stoppage in derogation of the terms of the collective bargaining agreement. As this Court stated in *Lincoln Mills*, the range of 'judicial inventiveness' in fashioning a §301 remedy will be determined by the nature of the problem. 353 U.S. 448 at 457.

In *Atkinson* v *Sinclair Refining Co.*, 370 U.S. 238 (1962) this Court did not decide the issue of individual liability because the individual defendants were alleged to be agents of the union. 370 U.S. 238 at 249 n. 7. However, in *Boys Markets* v *Retail Clerks Union Local 770*, 398 U.S. 235 (1970), this Court pointed out an award of damages is not an effective remedy for an employer faced with an illegal strike and would only tend to aggrevate industrial strife and delay an early resolution of the difficulties between an employer and union. 398 U.S. 235 at 248.

In *Charles Dowd Box* v *Courtney*, 368 U.S. 502 at 509 (1962), this Court concluded 301 was substantially similar to its direct antecedent §10 of H.R. 4908, 79th Cong., 2d Sess. (1946) in conferring upon the federal district court's jurisdiction over suits involving breaches of the collective bargaining agreement. §10 (d) of H.R. 4908 provided that employees participating in unauthorized work stoppages in breach of the collective bargaining agreement would lose their status as employees under the Act.

The Seventh Circuit in *Sinclair* pointed out neither Congress nor this Court has been persuaded by the argument advanced by the employer in *Sinclair* that recovery of damages against wildcat strikers would serve the national labor policy of encouraging peaceful settlement of labor disputes. The Seventh Circuit relied on what this Court stated in *Boys Markets*, 452 F. 2d 49 at 54. The Seventh Circuit rejected the employer's argument for money damages against its employees for participating in an unau-

thorized work stoppage. The Seventh Circuit went on to conclude that:

> Congress was well aware of the problems involved in reaching and enforcing no-strike agreements and we think that when Section 301 was enacted it had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. We conclude that the primary remedy of *Sinclair* is discharge or discipline of individual defendants. Of course the union has the right to discipline its disobedient members. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l. Union*, 452 F. 2d 49 at 54 (7th Cir. 1971) (Citations and footnotes omitted.)

The Appeals Court correctly refused to adopt those cases petitioner argued had exhibited the, "judicial inventiveness" this Court spoke about in *Lincoln Mills*, 353 U.S. 448 at 457. The Petitioner relied upon *New York State United Teachers* v *Thompson*, 459 F. Supp. 677 (N.D. N.Y. 1978); *Alloy Cast Steel Corp.* v *United Steel Workers*, 429 F. Supp. 445 (N.D. Ohio 1977); *Maita* v *Killeen*, 465 F. Supp. 471 (E.D. Pa. 1979). In rejecting the Petitioner's argument for, "judicial inventiveness", the Appeals Court distinguished *New York Teachers* v *Thompson*, by concluding that case did not involve a no-strike agreement, the employees sued had not acted collectively, and as the employees had previously resigned, the remedy of discipline or discharge was non-existent. The Appeals Court concluded the *Thompson* case was distinguishable on numerous grounds. (App. A, 12a) the Appeals Court in rejecting Petitioner's argument to adopt the conclusion reached by the Federal court in *Alloy and Maita* cases concluded the Federal court's reliance upon the cited cases,[16] stated from these two opinions of this Court do not compel the conclusion reached by the Federal courts in *Alloy and Maita*. (App. A, 12a)

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[16] *Smith* v *Evening News Ass'n.*, 371 U.S. 195 (1962); *Hines* v *Anchor Motor Freight*, 424 U.S. 554 (1976)

The Appeals Court exercised the proper, "judicial inventiveness" in deciding §301 did not provide an employer with a money damage remedy for individual employee breaches of the collective bargaining agreement due to their participating in unauthorized work stoppages. (App. A, 13a) In rejecting Petitioner's argument and concluding the only remedy afforded an employer under §301 for such employee breaches of the collective bargaining agreement is discharge or discipline of the employee, the Appeals Court did exercise the correct, "judicial inventiveness", this Court has urged Federal courts to use in §301 actions. As this Court has held, employers faced with their employees participating in unauthorized work stoppages are able to obtain injunctive relief of alleged employee contractual breaches *Boys Markets, Inc.* v *Retail Clerks Union Local 770,* 398 U.S. 235 at 254 (1970), and the employer is able to exercise the self help remedy of discharge if their employees' action is unprotected. *Emporium Capwell Co.* v *Western Addition Community Organization,* 420 U.S. 50 at 72 (1975); *Atkinson* v *Sinclair Refining Company,* 370 U.S. 238 at 246 (1962).

The Appeals Court in adopting the analysis and conclusion of the Seventh Circuit decision in *Sinclair Oil* concluded the Seventh Circuit exercised the appropriate, "judicial inventiveness" required in interpreting §301 policy and legislative history. Likewise, there are several other decisions by Federal courts that have reached the same determination on this issue,[17] and each of these courts have

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[17] See e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 LAB. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 LAB. Cas. (CCH) Par. 10, 612 (D. Utah 1978); *Lakeshore Motor Freight* v *Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*,____F. Supp.____; 104 LRRM 2153 (W.D. Pa. 1980); *United Steelworkers of America* v *Lorraine, A Division of Koehring Co.*,____F. 2d____, 103 LRRM 2627 (6th Cir. 1980); *Putnam Fabricating Co.* v *Null*,____F. 2d____105 LRRM 2645 (4th Cir. 1980)

exercised the appropriate, "judicial inventiveness" urged by this Court in *Lincoln Mills*.

The Appeals Court correctly interpreted and construed this Court's decisions in *Smith and Hines* as they pertained to the development of Federal substantive labor law. The Appeals Court's decision on the issue of individual employee monetary liability is in accordance with Congressional purpose under §301 and with this Court's direction to Federal courts to exercise, "judicial inventiveness" in §301 cases by looking at Congressional policy in fashioning a remedy that effectuates that policy.

III. THE INTEGRITY OF THE COLLECTIVE BARGAINING AGREEMENT AND THE LEGISLATIVE POLICY BEHIND §301 OF ASSURING INDUSTRIAL PEACE WILL BE PRESERVED WITHOUT PERMITTING AN EMPLOYER TO RECOVER MONETARY DAMAGES FROM THEIR EMPLOYEES WHO PARTICIPATE IN UNAUTHORIZED WORK STOPPAGES IN BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

A. To Assure the Integrity of the Collective Bargaining Agreement It Is Not Necessary That an Employer Have a Damage Action Remedy Under §301 Available to Use Against Its Employees Participating in an Unauthorized Work Stoppage in Breach of the Collective Bargaining Agreement.

This Court has questioned the advisability of an employer's use of the money damage remedy even against a union as an instrument of achieving industrial peace. *Boys Markets, Inc.*, v *Retail Clerks Union, Local 770*, 398 U.S. 235 at 248 (1970). This Court stated:

> An award of damages after a dispute has been settled is no substitute for an immediate halt to an illegal strike. Furthermore, any action for damages prosecuted during or after a labor dispute would

> only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union. *Boys Markets,* at 248.

This Court has concluded an employer certainly has the right to discharge or discipline employees engaged in an unauthorized work stoppage in violation of the collective bargaining agreement; the employees' participation in the unauthorized work stoppage in violation of the collective bargaining agreement would be unprotected activity. *Atkinson* v *Sinclair Refining Company,* 370 U.S. 238 at 246 (1970); *Emporium Capwell Co.* v *Western Addition Community Organization,* 420 U.S. 50 at 72 (1975). This court stated:

> It is universally accepted that the no-strike clause in a collective bargaining agreement at the very least establishes a rule of conduct or condition of employment, the violation of which by employees justifies discipline or discharge. (Citations omitted.) The conduct charged in Count II is therefore within the scope of a violation of the collective bargaining agreement. *Atkinson* v *Sinclair* at 246.

The Petitioners' argued this Court's decision in *Carbon Fuel Company* v *United Mineworkers of America,*____U.S. ___, 100 S. Ct. 410 (1979) coupled with the Appeals Court's decision denying it a money damage remedy against the individual employees who participated in the unauthorized work stoppage totally denies the employer a money damage remedy to recoup its monetary losses in this situation. However, Petitioner has failed to point out it acted on its own not to seek a money damage remedy against the union long before this Court's decision in *Carbon Fuel* issued. (App. A, 9a) The Petitioner has not lost any remedy due to this Court's decision in *Carbon Fuel* that it had not already abandoned.

This Court's decision in *Carbon Fuel* in no way alters an employer's remedies against its employees for participat-

ing in an unauthorized work stoppage in violation of the collective bargaining agreement. The employer can enjoin the work stoppage under §301. *Boys Markets,* 398 U.S. 235 at 254 (1970) An employer can discharge or discipline its employees who participate in an unauthorized work stoppage. *Atkinson* v *Sinclair Refining,* 370 U.S. 238 at 246 (1962); *Emporium Capwell Co.* v *Western Addition,* 420 U.S. 50 at 72 (1975).

While the Senate Report indicates the primary advantage an employer expects to derive from a collective bargaining agreement is the assurance of uninterrupted operation during its term, it does not follow the employer can obtain a money damage remedy against its employees under §301 if the employees interrupt their employer's operation by an unauthorized work stoppage during the term of the collective bargaining agreement. S. Rep. No. 105 at 16. The Legislative history of §301 does not support Petitioners' argument. During deliberation on §301, Congress was well aware of employee participation in wildcat strikes and that the employee participation was without union authorization, support or sanction. During the Congressional deliberation of §301, it was apparent Congress did not intend to afford employers a money damage remedy to be used against employees participating in an unauthorized work stoppage although Congress was aware of the number of and employee participation in the wildcat strikes.[18]

Therefore, the same situations these employers find themselves having allegedly incurred financial losses while their employees participated in an unauthorized work stoppage was a situation Congress knew was occurring and had discussed during the Congressional debates on §301, and the Legislative history of §301 reveals Congress did not intend to provide employers with a money damage remedy for these wildcat work stoppages. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 at 54 (7th Cir. 1971)

[18] See. Text of Congressional discussion at Footnote 10, supra.

B. Exempting Employees From Individual Liability Does Serve a Legitimate Purpose Under Federal Labor Policy.

The Legislative history of §301 reveals a major purpose in its passage was to stabilize and insure industrial peace. S. Rep. No. 105 at 15, 17. This Court has questioned the advisability of an employer's use of the money damage remedy even against a union as an instrument of attaining industrial peace. *Boys Markets,* 398 U.S. 235 at 248 (1970) This Court concluded an employer's action for money damages against a union during or after a labor dispute tends to aggravate industrial strife and delays an early resolution of the difficulties between an employer and union. *Boys Markets,* at 248.

It would aggravate industrial strife, delay early resolution of disputes, and be more disruptive of industrial peace to permit an employer's action for money damage remedy against individual employees who participate in unauthorized work stoppages in breach of the collective bargaining agreement. If such cause of action was permissable under §301, once an employer obtained a money judgment against its employees, unless it opted not to do anything further, then it would institute post-judgment collection action such as garnishment, attachment or execution against its employees. It is difficult to imagine anything less conducive to promoting industrial peace and stabilizing industrial relations. The specter of the Danbury Hatters cases referred to in legislative discussion over the enactment of §301 certainly had to include the post-judgment collection action experienced by the employees who were exposed to such actions. 92 Cong. Rec. 5705 (1946) (Sen. Taft); 93 Cong. Rec. 6283 (1947) (Rep. Case). The Congressional concern with a repetition of the situation that occurred in the Danbury Hatters cases where many employees lost their homes was expressed during the debate. 93 Cong. Rec. 5014 (1947) (Sen. Ball).

The no-strike obligation does not become a hollow promise nor does it become meaningless without the employer's right to maintain a cause of action for money damages under §301 against its employees participating in an unauthorized work stoppage. The employer is able to enforce breaches of the no-strike provision of the collective bargaining agreement against its employees by enjoining such work stoppages. *Boys Markets*, 398 U.S. 235 at 254 (1970); the employer has the right to discharge or discipline employees participating in an unauthorized work stoppage in breach of the collective bargaining agreement. *Atkinson* v *Sinclair Refining*, 370 U.S. 238 at 246 (1962); *Emporium Capwell*, 420 U.S. 50 at 72 (1975). Of course, the union has the right to discipline its disobedient members who participate in the unauthorized work stoppage against the employer by fining them if they refuse to return to work after the union has requested them. *Sinclair Oil Corp.*, 452 F. 2d 49 at 53 (1971). The employer's present methods of enforcing breaches of the no-strike provisions insure the no-strike obligation will not become meaningless.

The Fourth Circuit in *Putnam Fabricating Co.* v *Null*, ___F. 2d___, 105 LRRM 2645 (4th Cir. 1980) stated they were influenced by the arguments relied upon in *Sinclair Oil*, by the Seventh Circuit in rejecting an employer's cause of action for money damages against its employees who participated in an unauthorized work stoppage; thereafter, the Fourth Circuit stated they were also influenced by the fact:

> That in some nine years since the Seventh Circuit decided *Sinclair Oil*, Congress has not seen fit to take any action to alter the result in that case. *Putnam Fabricating*, 105 LRRM 2646 at 2646.

Since the Seventh Circuit's decision in *Sinclair Oil*, Congress had ample time to rectify and correct any erroneous misconceptions the Federal courts have entertained relating to the remedies available an employer under §301 in actions

against employees who participate in unauthorized work stoppages against employers, including a money damage remedy. Congressional silence on this issue is significant.

C. Allowing a Damage Action Against Individual Employees in the Instant Case Without Congressional Action to Amend §301 Will Mark a Return to the Era of the Danbury Hatters Cases.

As the Fourth Circuit in *Putnam Fabricating*, ___F. 2d ___, 105 LRRM 2645 at 2646 (1980) pointed out that in the nine years since the Seventh Circuit's decision in *Sinclair Oil*, Congress has not seen fit to alter the results of that case by amending §301. Since then, there have been decisions of other Federal courts prior to the decision of the Appeals Court in the instant case. e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978), and Congress has remained silent. In light of these decisions, Congressional silence should certainly be considered tacit approval of the results of these Federal court's construction of §301 on the issue of individual employee liability in money damages to their employers for their participation in an unauthorized work stoppage. If employers were permitted any money damages remedy under §301 against their employees who participated in an unauthorized work stoppage, it would result in and subject the employees to the same type of inherent harm experienced by the Danbury Hatters members. Employees' wages would be garnished, attachment and execution against their possessions would occur. The specter described in the Congressional debate would be revisited. The repetition of what happened to the Danbury Hatters members losing their homes and possessions would occur again. 93 Cong. Rec. 5014 (1947) (Sen. Ball).

If there ever is to be a return to the Danbury Hatters era, Congress should determine it by enacting legislation or

amending §301 to specifically permit employers to bring an action for money damages against its employees for breach of the collective bargaining agreement. Permitting an employer to sue its employees for money damages who participate in unauthorized work stoppages will not lead to stable nor peaceful industrial relations; quite to the contrary it will only exacerbate the situation. This Court has already stated that the prosecution by the employer of a money damage action against a union during or after a labor dispute would only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union. *Boys Markets*, 398 U.S. 235 at 248 (1970). It would be equally disruptive and counterproductive in attaining stable and peaceful industrial relations to permit an employer a cause of action for money damage relief against its employees.

The existing remedies available to an employer, discharging and disciplining employees who breach a collective bargaining agreement, *Atkinson and Emporium Capwell*, or enjoining the unauthorized work stoppage, *Boys Markets*, and the union's ability to fine members refusing to return to work after the union has requested them to do so, *Sinclair Oil*, are sufficient to assure compliance with the enforcement of the terms of the collective bargaining agreement. The void the Petitioner is asking this Court to fill between *Atkinson* v *Sinclair Refining*, 373 U.S. 238 (1970) and *Carbon Fuel Company*, 100 S. Ct. 410 (1979) should be left to Congress to fill by amending §301 if Congress deems it appropriate.

Employees are accountable to their employer every day and are required to adhere to their obligations under the collective bargaining agreement. An employee's failure to abide by the terms of the collective bargaining agreement subject the employee to being disciplined up to and including discharge. The employer's prerogative to discharge or discipline employees who breach the collective bargaining agreement assures the integrity of the collective bargaining

agreement agreement is served and maintained and acts as a strong deterent to any employee refusing to fulfill his obligations under the collective bargaining agreement. Additionally, the employer can enjoin in a §301 action unauthorized work stoppages in breach of the collective bargaining agreement. *Boys Markets*, 398 U.S. 235 at 248 (1970) and its decision to discipline or discharge employees participating in an unauthorized work stoppage will be supported. *Atkinson* v *Sinclair Refining*, 373 U.S. 238 at 246 (1962); *Emporium Capwell*, 420 U.S. 50 at 72 (1975). These are the remedies available to an employer for use when confronted with an unauthorized work stoppage of its employees.

CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

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